

AGENDA MEMO

CITY COUNCIL MEETING DATE: JANUARY 3, 2007

DEPARTMENT: PLANNING AND DEVELOPMENT

ITEM DESCRIPTION: ABEYANCE - VAR-16144 - APPLICANT: T-MOBILE USA, INC. - OWNER: MESQUITE WOOD 3, LLC

THIS ITEM WAS HELD IN ABEYANCE FROM THE DECEMBER 6, 2006 CITY COUNCIL MEETING AT THE REQUEST OF THE APPLICANT.

**** CONDITIONS ****

The Planning Commission (6-0-1/se vote) and staff recommend DENIAL, subject to:

Planning and Development

1. Approval of and conformance to the Conditions of Approval for Special Use Permit SUP-16143 shall be required.
2. This approval shall be void two years from the date of final approval, unless a certificate of occupancy has been issued or upon approval of a final inspection. An Extension of Time may be filed for consideration by the City of Las Vegas.

**** STAFF REPORT ****

PROJECT DESCRIPTION

This is a request for a Variance to allow a wireless communications facility, stealth design at a residential adjacency of 68.2-feet from the rear property line where 210-feet is the minimum setback required.

BACKGROUND INFORMATION

| <i>Related Relevant City Actions by P&D, Fire, Bldg., etc.</i> | |
|--|--|
| | The Planning Commission recommended denial of companion item SUP-16143 concurrently with this application. |
| 10/05/06 | The Planning Commission voted 6-0-1/se to recommend DENIAL (PC Agenda Item #43/ar). |
| <i>Related Building Permits/Business Licenses</i> | |
| 1958 | The church on the site was constructed |
| <i>Pre-Application Meeting</i> | |
| 08/02/06 | Staff explained the requirements for this application |
| <i>Neighborhood Meeting</i> | |
| | A neighborhood meeting is not required for this application |

| <i>Details of Application Request</i> | |
|---------------------------------------|------|
| <i>Site Area</i> | |
| Net Acres | 3.82 |

| Surrounding Property | Existing Land Use | Planned Land Use | Existing Zoning |
|----------------------|-------------------------|-----------------------------|---------------------------------|
| Subject Property | Church | L (Low Density Residential) | C-V (Civic) |
| North | Single Family Dwellings | L (Low Density Residential) | R-1 (Single Family Residential) |
| South | Single Family Dwellings | L (Low Density Residential) | R-1 (Single Family Residential) |
| East | Church | L (Low Density Residential) | R-1 (Single Family Residential) |
| West | Single Family Dwellings | L (Low Density Residential) | R-1 (Single Family Residential) |

| <i>Special Districts/Zones</i> | <i>Yes</i> | <i>No</i> | <i>Compliance</i> |
|---|------------|-----------|-------------------|
| Special Area Plan | | X | |
| <i>Special Districts/Zones</i> | <i>Yes</i> | <i>No</i> | <i>Compliance</i> |
| Special Purpose and Overlay Districts | | | |
| C-V Civic District | X | | Y |
| Trails | | X | N/A |
| Rural Preservation Overlay District | | X | N/A |
| Development Impact Notification Assessment | | X | N/A |
| Project of Regional Significance | | X | N/A |

DEVELOPMENT STANDARDS

| <i>Residential Adjacency Standards</i> | <i>Required/Allowed</i> | <i>Provided</i> | <i>Compliance</i> |
|--|-------------------------|-----------------|-------------------|
| 3:1 proximity slope | 210 Feet | 68.2 Feet | N |
| Adjacent development matching setback | 15 Feet | 68.2 Feet | Y |

Pursuant to Title 19.10, the following parking standards apply:

| Parking Requirement | | | | | | | |
|----------------------------|-------------------------------------|---------------------|-----------|--------------|------------|--------------|------------|
| Use | Gross Floor Area or Number of Units | Required | | | Provided | | Compliance |
| | | Parking Ratio | Parking | | Parking | | |
| | | | Regular | Handi-capped | Regular | Handi-capped | |
| Church/House of Worship | 300 Fixed Seats | 1 sp/ 4 fixed seats | 75 spaces | 3 spaces | 113 spaces | 3 spaces | Y |
| | | | | | | | |
| TOTAL (including handicap) | | | 75 | 3 | 113 | 3 spaces | Y* |

*The placement of equipment associated with the cellular tower will result in a reduction in the amount of on-site parking from 116 to 113 spaces, which still is in compliance with the zoning code.

ANALYSIS

The existing church is a permitted use in the C-V zoning district. The cell tower is a permitted use upon either an administrative approval or approval of a Special Use Permit. Because of the adjacent residential development and non-compliance with the residential adjacency standards, this proposed tower location was deemed to be unsuitable for an administrative approval, and the applicant was directed to file a Special Use Permit application and a Variance application related to residential adjacency.

The proposed stealth antenna is located on the southwest portion of the subject C-V zoned parcel. It is a monopalm design at a height of 70 feet to the top of fronds. Title 19.08.060 states that a Wireless Communication Facility, Stealth Design, be separated from residential uses by proximity slope of 3:1. This requires the proposed 70-foot antennae to be located 210 feet from the adjoining R-1 (Single Family Residence) property. The submitted site plan indicates that a setback of 68.2 feet is provided. This use is not compatible with the C-V and R-1 developments in the surrounding area; therefore denial is recommended.

FINDINGS

In accordance with the provisions of Title 19.18.070(B), Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature.”

Additionally, Title 19.18.070L states:

“Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.”

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by proposing a 70-foot tall wireless communication facility adjacent to single family residences. Alternative site selection would allow conformance to the Title 19 requirements. In view of the absence of any hardships imposed by the site’s physical characteristics, it is concluded that the applicant’s hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

PLANNING COMMISSION ACTION

There were six speakers in opposition at the Planning Commission Meeting.

NEIGHBORHOOD ASSOCIATIONS NOTIFIED 14

ASSEMBLY DISTRICT 12

SENATE DISTRICT 10

NOTICES MAILED 395 by City Clerk

APPROVALS 0

PROTESTS 1